IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11126 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RADHAKRISHNA CHUNILAL SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

None present for Respondent Nos. 1, 2 & 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/01/2001

ORAL JUDGEMENT

#. The learned AGP prays for short time to file reply to the Special Civil Application on behalf of respondent Nos. 1 and 3. This request is declined. This matter is squarely covered by the decision of this court in the

case of Ganesh Chimanlal Jaishwal Vs. Commissioner of Police in Special Civil Application No 10611 of 2000, both on question of grant of time for filing reply by respondents Nos. 1 and 3 as well as question of awarding costs to the petitioner.

#. The petitioner-detenu has been detained by order dated 6.10.2000 issued by District Magistrate, Valsad in exercise of powers under sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as Act).

#. In a case where the petitioner has been ordered to be detained under the provisions of sub-section (2) of Section 3 of the Act involving in the activity of adulteration in the petroleum products how the matter has been taken by the State of Gujarat and the Union of India is a matter to be emphasized upon and take note of it. From the facts of this case I find that there are possibilities that the officers of the impersonal state of Gujarat made efforts to favour the petitioner and make it easy for him to get rid of this order of detention. If this order of detention is passed only for statistical purposes and release of the detenu by the court then it is nothing but only a fraud on the provisions of the Act.

#. The State of Gujarat has not cared to file reply to the Special Civil Application though it has more then sufficient time to its disposal if it so desire to file reply to the Special Civil Application.

This petition was admitted on 19.10.2000 and thereafter it has come up on the Board on 23.11.2000, 30.11.2000, 14.12.2000 and 21.12.2000, 8.1.2001. On 8.1.2001 on the request of the learned counsel for the respondent No.1 to 3 short adjournment has been granted for filing of the reply by them. The respondent No.2 filed the reply to the Special Civil Application but the respondent No.1 has not filed reply to the Special Application.

I have gone through the contents of the reply filed by respondent No.2 to the Special Civil Application and I am constrained to observe that he has filed the reply as if he is a different State or nation, meaning thereby has no relation whatsoever to the respondent No.1 or respondent No.4. It is a reply just what as it is filed or expected to be filed by the State in reference made to the Hon'ble Supreme Court under Article 131 of the Constitution of India.

The respondent No.2 is none other than a District Magistrate of one of the Districts of State of Gujarat. He is an officer of the State of Gujarat. He is an officer subordinate to the State of Gujarat. It is not a case where in the detention matters merely because he has statutory powers to pass order of detention of citizen, his identity as a subordinate officer of the State of Gujarat does abolish. If we go by the provisions of Section 3 of the Act it is delegated authority by the State which he is exercising. In the detention matters, as what it also reflects from this case there is no coordination even in between State of Gujarat and its officers (detaining authority). It is to be stated that even in a case where State of Gujarat has been served with the notice of Rule and detaining authority is not served, insistence is there from the side of AGP to issue fresh notice to the detaining authority. The case is against the State of Gujarat and its officer and it is expected that there should have been coordination in between them and case has to be defended by them jointly. In this case in the reply filed by the respondent No.2, grievance made by the petitioner regarding inaction and omission or irregularity, illegality committed either by State of Gujarat or Union of India, he has not given any reply and felt content and satisfied by reciting that these averments concerned to the other respondents. This approach of District Magistrate in this matter is wholly perverse and arbitrary. He is an officer subordinate to the State of Gujarat and before filing affidavit-in-reply he could have taken instructions from the State of Gujarat and then to file reply to the writ petition both for State and itself.

#. The learned counsel for the petitioner raised manifold contentions challenging the order of detention of the petitioner but as this petition deserves to be allowed on contentions raised in para Nos. (c), (d), (i) and (j), it is not necessary and desirable for the court to digest on all these contentions and to give the decision thereon.

#. In para (c) the petitioner complained that the detaining authority has not forthwith reported the fact of detention of the petitioner to the State Government to which he is subordinate together with the remarks on which the order has been made and other particulars, as in his opinion, which has a bearing in the matter. In para (d) the grievance made is that the respondent No.1 has failed to report the fact of the detention of the petitioner within a period of 7 days to the Central

Government together with grounds and such other particulars in English language on which the detention order has been passed. In para (i) the petitioner submitted that the respondent No.1 State of Gujarat and respondent No.4 Union of India have failed to consider the representation dated 12.10.2000 made through respondent No.1

#. In para (j) the contention of the petitioner is that the State of Gujarat has failed to forward the copy of the representation to the Advisory Board as well as the Central Government forthwith and therefore the continued detention of the petitioner has become bad in law. So far as respondent Nos.4 is concerned it is to be stated that the averments made in the petition by the petitioner stand uncontroverted from its side.

#. The respondent No.2 replied the grievance made by the petitioner in paras (c), (d), (i) and (j) as under :-

"With reference to the ground (c) of the petition I say that the contention of the petitioner that the detaining authority has not forthwith reported the facts of detention to the State Government is not correct since it was reported to the State Government on 6/10/2000 i.e. on the day of passing the order of detention.

With reference to ground (d) of the petition, I say that the same pertains to the State Government and I rely upon the affidavit that may be filed by the state government.

With reference to ground (i) of the petitioner I say that I have no remarks to offer as the matter referred to in this para relates to respondents 1 and 4.

With reference to ground (j) I have no remarks to offer since the matter referred to in this para relates to respondent No.I."

#. It is true that the respondent No.2 has stated that he has forth with reported the facts of the detention of the petitioner to the State Government. The date has also been given on which he reported the facts of the detention to the State i.e. on 6.10.2000. The respondent No.2 has not produced any cogent and satisfactory evidence in support of his these statements. When the petitioner has made a grievance that the

respondent No.2 forthwith has not reported to the State Government about his detention it is being a question of fact, it has to be proved to the satisfaction of the court by producing cogent and satisfactory evidence by the detaining authority. In para No.7 of the reply the respondent No.2 has made this averment of the fact on affidavit. It is true that affidavit is also an evidence but where to prove a fact documentary evidence is there then that evidence has to be produced on record of the case. For this documentary evidence and to prove the contents thereof the oral evidence cannot be permitted. This is one reason on which this mere statement of respondent No.2 made deserves no acceptance. Yet there is another reason for which this statement made by respondent No.2 cannot accepted. The averments made by the respondent No.2 in para 7 of the reply are verified true to the best of his knowledge and information which he believes the same to be true. From this verification one thing is very clear that he has not verified the statements made by him in para 7 of the affidavit on the basis of the record. Whether the respondent No.2 forthwith reported the facts of the detention of the petitioner to the State Government is a matter of the record. Be that as it may, the respondent No.2 has not stated that the averments made in para 7 are true to the best of his knowledge drawn from the record. He verified all of his averments made in the affidavit to the best of his knowledge and information. On the basis of such an affidavit otherwise also and more so when very specifically it is not stated that the facts stated by him in para No.7 are correct to the best of knowledge drawn from record cannot be relied upon. In these facts it cannot be accepted that the respondent No.2 forthwith reported the fact of the detention of the petitioner to the State Government. Accordingly, the grievance made by the petitioner in the Special Civil Application that the detaining authority, respondent No.2 forthwith has not reported the fact of the detention of the petitioner to the State Government deserves acceptance.

##. Averments made in para (d) of the special Civil Application have not been controverted by the respondent No.1. So far as respondent No.2 is concerned he felt content and satisfied by stating that the same pertains to the State Government and he relied upon the affidavit that may be filed by the State Government. From this approach it is clear that this officer is totally unmindful of his position in the State and as well as his responsibility and duty as an officer subordinate to the State of Gujarat. It is unfortunate for impersonal machinery of State of Gujarat that its officers behave

and act in a manner and fashion which may though nothing can be said finally in this case, amount to conduct unbecoming of a Government officer. The averments made in para (d) of the petition has not been replied by the respondent No.1 So the grievance of the petitioner that respondent No.1 has failed to report the fact of the detention of the petitioner within 7 days to the Central Government together with grounds and such other particulars in English language stand uncontroverted and same are to be accepted. Reply of the respondent No.4 is there on the record of this case. In para No.3 thereof reply to the averments of the petitioner in para No.(d) thereof are replied as under:-

"3. As regards contention made in sub-paras (d) and (e) of para No.4 it is submitted that in the instant case detention order was approved by the State Government on 16.10.2000. The report thereof sent by them vide their letter dated 18.10.2000 was received in this Department on 19.10.2000."

From this reply of the respondent No.4 case of the petitioner stands uncontroverted. In fact, it is admitted by the respondent No.4 that the respondent No.1 has failed to report the fact of the detention of the petitioner within 7 days to it together with the grounds and such other particulars in English language on which the detention order has been passed.

In this case, the State of Gujarat the respondent No.1 herein, has failed to report the fact of the detention of the petitioner within 7 days to the Central Government together with grounds and such other particulars in English language on which the detention order is passed and it is a clear case where mandatory provisions of the sub-section (4) of Section 3 of the Act have not strictly been complied with.

##. The complaint of the petitioner that respondent No.1 has not considered his representation dated 12.10.2000 made through respondent No.2 stand uncontroverted by this respondent. The respondent No.2 felt content and satisfied to state that he has no remarks to offer as the matter referred in this para i.e. para no.(i) relates to respondent No.4. It is a case where representation of the petitioner has not been considered by the respondent No.1 therefore his continuous detention is illegal as being violative of Articles 22(5) of the Constitution of India.

From the reply of the respondent No.4 it is also clear that there also considerable delay is made in deciding the representation of the petitioner. In para No.4 of the reply the respondent No.4 stated;

"4. As regards contention made in sub-paras (h), (i), (j) and (k) of para 4 of the petition, it is submitted that a representation dated 12.10.2000 made by the advocate of the detenu was received in the Central Government on 6.11.2000 through office of the District Magistrate, Valsad vide their letter dated 23.10.2000. After considering the representation along with other relevant records the same was rejected by the Competent Authority in the Central Govt. on 7.11.2000. The decision of the Central Government was conveyed to Superintendent, Central Jail, Sabarmati on 7.11.2000 by telegram with a direction to convey the same to the detenu. State Government was also informed simultaneously on the same day. Thus, the representation of the detenu was considered by the Central Govt. as expeditiously as possible".

It is not in dispute that the petitioner made representation on 12.10.2000 to the respondent No.4 which was received through respondent No.2 on 6.11.2000. It was stated to be sent by the respondent No.2 on 23.10.2000. So these two delays in sending this representation and receipt thereof have not been explained.

##. In the result, this Special Civil Application succeeds and the same is allowed. The order of detention dated 6.10.2000 is quashed and set aside and the petitioner-Radhakrishna Chunilal Sharma, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.5,000/= as the costs of this petition to the petitioner.

##. The learned counsel for the respondent Nos. 1 to 3 strongly opposed awarding of the cost of this litigation to the petitioner. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such objection by the learned counsel for the respondent Nos. 1 to 3. Otherwise also I consider it to be a fit case to award the costs. The learned counsel

for the petitioner made a statement on being put by the court that he has charged Rs.5,000/= as a fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner to him. It is the question of the personal liberty and the petitioner is free to engage an advocate of his choice. Nobody can compel the petitioner nor any law which required that he has to engage an advocate who charges lesser fees. The advocate is a professional and if any body approach to him to provide his professional services he can charge his own fees. This may not be only money which would have been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition but the counsel for the petitioner has not produced any bill of expenses under these heads and as such that amount cannot be awarded to the petitioner.

##. The State of Gujarat an impersonal machinery is not at fault in the matter. Its only fault is that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money. This money has to be paid to the petitioner by the State of Gujarat not for its fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the reply in the matter in the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary loss and that amount is recovered from those officers its House may be corrected.

(S.K.Keshote, J.)

*Pvv/Sunil